IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Crl. Appeal No. 235- DB of 1998
Date of Decision: Nov.23,2007

Pipal Singh ..... Appellant

Versus

State of Punjab..... Respondent

Coram: Hon'ble Mr.Justice Ashutosh Mohunta
Hon'ble Mr. Justice Mohinder Pal

Present: Mr. K.D.S. Hooda, Advocate
for the appellant.

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ASHUTOSH MOHUNTA, J.

The appellant-Pipal Singh has filed this appeal challenging the judgment and order dated 19.3.1998 passed by the Sessions Judge, Patiala, vide which he has been convicted under Section 302 IPC and has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.50,000/- and in default of payment of fine, the appellant has been further ordered to undergo rigorous imprisonment for two years.

Briefly the facts of the prosecution case are that Pipal Singh and Niranjan Singh were real brothers and lived in adjoining houses. There was a dispute between the brothers with regard to possession of a room which the appellant wanted but his brother Niranjan Singh was refusing to surrender. On June 21,1996 at about 10:30 A.M. Sher Singh (PW2) son of Niranjan Singh deceased and his mother Manjit Kaur (PW3) were standing outside the main gate at the boundary wall of their house whereas Niranjan Singh had gone to the fodder room to fetch fodder. At that time, Pipal Singh abused Niranjan Singh from across the wall. Niranjan Singh asked his brother Pipal Singh to speak properly. Thereafter the appellant brought out his .12 bore single barrel gun and

fired two shots at his brother Niranjan Singh, while standing in his courtyard, hitting on his chest and stomach as a result of which Niranjan Singh fell down and died on the spot. Thereafter, Pipal Singh also raised a Lalkara challenging Sher Singh and his mother that if they came near him, he would set them right also. Sher Singh and his mother retreated into their house and bolted the door whereas Pipal Singh escaped from the spot along with his gun. Sher Singh set out to report the matter to the police and on his way met SI Bahadur Singh (PW4) at bus stand Datal at 11:00 A.M. and narrated the entire incident on the basis of which his statement Ex.PD was recorded which was signed by him. The formal FIR Ex.PD/2 was recorded at Police Station Patran by ASI Shahi Ram.

The investigation in the case was commenced soon thereafter by SI Bahadur Singh who proceeded to the spot and prepared the inquest report Ex.PC and recorded the statements of the prosecution witnesses. SI Bahadur Singh also took into possession the blood stained earth from the spot which was put in a parcel and sealed and taken into possession vide Memo Ex.PE. An empty cartridge was also recovered from the place of occurrence which was also sealed with the seal BS and taken into possession vide Memo Ex.PF.

The post-mortem was conducted by Dr. Satish Arora (PW1) at 4:20 P.M. on June 21,1996 and the Doctor found the following injuries on the dead body of Niranjan Singh:-

"1. Fire arm injuries:-

(a) Wound of entry 1.8cm x 1.8cm x 8cm in the epigastrict regon of abdomen, margins were inverted collar of abrasion was present around the wound.

2. (a) Wound of entry 1.8cm x 1.8cm x 10cm on the front of right side of chest in its lower 1/3rd, margins were

inverted, collar of abrasion of was present around the wound.

Multiple Pellet wounds 0.5cm x 0.5cm about 50 in number present around the injuries 1-A and 2-A, pellet wounds circular with inverted margins.

Pleurae was ruptured on the right side. Haemothorax with 800 cc of blood. Right lung was ruptured due to pellet wounds, Percardium was ruptured and two pellet wounds were present in the left auricle. Peritoneum was ruptured. Haemoperitoneum about 1200 cc of blood was present."

In the opinion of the Doctor, the death was due to firm-arm injuries to heart, right lung and liver, resulting in haemorrohage and shock which was sufficient to cause death in the ordinary course of nature.

The appellant was arrested on July 1,1996 and was interrogated by Inspector Mehnga Singh in the presence of Mukhtiar Singh and Mohinder Singh. During interrogation, the accused disclosed that he had kept his .12 bore gun in the room near his residential house under the heap of fodder and could get the same recovered. His Statement Ex.PK was recorded and in pursuance thereof gun Ex.P1 was recovered along with four cartridges which were taken into possession vide Memo Ex.PL. Two cartridges C1 and C2 were sent for Ballistics examination to the Forensic Science Laboratory and the Ballistics Expert vide his report Ex.PT opined that both the cartridges had been fired from .12 SBBL gun. The blood stained earth and blood stained underwear of the deceased were also sent to the Chemical Examiner who vide report Ex.PU confirmed that there was blood on the two samples sent for chemical examination.

In order to prove its case, the prosecution examined Dr. Satish Arora PW1 who conducted the post-mortem on the dead body of Niranjan Singh, Sher Singh son of the deceased as PW2, Manjit Kaur wife of the

deceased as PW3 and other official witnesses. The prosecution also tendered in evidence report of the Ballistics Expert Ex.PT, report of the Chemical Examiner Ex.PU and report of the Serologist Ex.PV and closed the prosecution case.

The accused in his statement under Section 313 Cr.P.C. Stated that he has been living separately for the last eight years and his house adjoins the fodder room of Niranjan Singh. The appellant, however, denied having fired at Niranjan Singh with his gun. It was stated that Sher Singh was a vagabond and his father Niranjan Singh was unhappy because Sher Singh was not doing any work. It was further stated that in fact it was Sher Singh who fired at his father and that the appellant has been falsely implicated in connivance with the police. In his defence, the appellant examined Jeon Singh DW1 and HC Kuljit Singh DW2. Jeon Singh-DW1 stated that the deceased Niranjan Singh had told him that his son is a bad character and misbehaves with him and asked him to make Sher Singh understand to behave properly. It was further stated that the accused had told him that his brother Niranjan Singh was murdered by Sher Singh with the gun of Gurbax Singh, his brother-in-law. In cross-examination, this witness further stated that the occurrence was not witnessed by him.

Shri S.N.Sharma, Deputy Director Forensic Science Laboratory, Punjab, Chandigarh, was examined as Court Witness as CW1.

The trial Court on the basis of the testimonies of Sher Singh PW2 and Manjit Kaur PW3, who had witnessed the entire occurrence which was corroborated by the Ballistics Expert Shri S.N.Sharma and Dr. Satish Arora PW1, held that it was the appellant who killed his brother Niranjan Singh and convicted him under Section 302 IPC and sentenced

him to undergo life imprisonment.

Shri K.D.S.Hooda, Advocate, was appointed as Amicus Curiae to defend the appellant in this case.

Mr. Hooda has firstly argued that there was a 7/8 feet high wall intervening between the houses of the appellant and the deceased. It has been argued that the appellant is alleged to have fired from the courtyard of his house at Niranjan Singh and the fire hit the deceased in his chest and stomach. It is further argued that if there was a 7/8 feet high wall separating the two houses of the appellant and the deceased then gun shot fire could not have hit the deceased in his chest and stomach as the fire would have gone much higher. We find no merit in this argument as according to PW3 Manjit Kaur the boundary wall of their house was 4 feet high. The suggestion of the counsel for the defence that the wall was 8 feet high was categorically denied by this witness. Even PW2 Sher Singh has stated that the wall was about 5 feet. Thus, as the boundary wall was only 4 feet high, therefore, the appellant could easily have fired on the chest and stomach of the deceased from the courtyard of his house.

It has next been contended by the counsel for the appellant that there has been an inordinate delay in lodging the FIR as well as delay in sending the FIR to the Judicial Magistrate. It has been contended that although the FIR is alleged to have been recorded at 12:50 P.M. but the special report reached the Judicial Magistrate at Samana at 5:40 P.M. It has further been contended that this delay has been utilized to implicate the appellant falsely. This argument of the counsel for the appellant is also without any force. The occurrence in this case is alleged to have taken place on 21.6.1996 at about 10:30 A.M. The first informant Sher Singh son of the

deceased left village Molviwala on his cycle and on the way he met SI Bahadur Singh at bus stand Datal at 11:00 A.M. to whom the entire incident was narrated on the basis of which his statement Ex.PD was recorded. Thus, the first version has been reported by PW2 Sher Singh immediately after the occurrence and there is no possibility of either any false implication or of introducing a false version. The FIR in this case was recorded at 12:50 P.M. on 21.6.1996 at Police Station Patran. The special report reached the Judicial Magistrate, Samana, at 5:40 P.M. The distance between Patran and Samana is 30 kms. Therefore, we are of the considered opinion that there was no delay in the special report reaching the Judicial Magistrate at Samana.

Learned counsel has also argued that as PW2 Sher Singh son of the deceased was a vagabond and was not doing any work, therefore, he used to be reprimanded by his father Niranjan Singh. It is contended that on account of continuous nagging of the deceased Sher Singh PW2 committed the murder of his father. Learned counsel has also referred to the deposition of DW1 Jeon Singh in this regard. This argument of the counsel for the appellant is also without any basis as there is no evidence on record to suggest that there was a misunderstanding or a dispute between Sher Singh and his father Niranjan Singh.

Apart from the above, PW2 Sher Singh and PW3 Manjit Kaur have given a detailed graphic account in the manner in which Niranjan Singh was shot by the appellant. Both these persons are natural witnesses and had witnessed the occurrence. Both these witnesses have stated that there was a dispute between the appellant and the deceased with regard to a room and that the appellant had first abused the deceased and on being told

to behave properly, he brought his .12 bore single barrel gun and fired two shots at Niranjan Singh which hit him in the chest and stomach as a result of which Niranjan Singh died on the spot. The testimony of PW2 and PW3 has not been shaken in any manner in the cross-examination. The testimonies of these two witnesses also stand corroborated by the medical evidence of Dr. Satish Arora PW1 who found the wounds of entry of gun shot fire around the abdomen and chest. The Doctor has categorically stated that the injuries occurred due to gun shot fire and that the death was instantaneous. In this case the empty cartridge was recovered from the place of occurrence and an empty cartridge was also found in the breech of the gun. The gun was a licensed one and it belonged to the accused Pipal Singh. The Ballistics Expert Shri S.N.Sharma confirmed that the two cartridges have been fired from the gun recovered which belonged to the appellant. This witness has also deposed in detail about the dispersion of the pellets which can in fact determine the distance from which the shot was fired. In the present case, PW1 Dr. Satish Arora stated that the pellet marks were in an area of 10 to 12 cms. around both the injuries. The dispersion is less than 10 cms. Thus, according to the accepted formula to determine the range from which a shot has been fired, if the dispersion is `X' inches then the range is `X' yards. In the present case, the dispersion of the pellets is around 4 inches and, therefore, the gun shot was fired from a distance of approximately 4 yards. According to Ex.PG the place where the accused were shown to have stood was 3 karams from the place where the dead body was lying which means that the accused fired from a distance of about 16 feet. The distance from which the shot was fired also tallies with the report of the Ballistics Expert.

It is, thus, clear that on 21.6.1996 at about 10:30 A.M. the

appellant had fired two shots from his .12 bore single barrel gun at his brother Niranjan Singh hitting him on his chest and stomach as a result of which Niranjan Singh died. The occurrence was witnessed by the son and wife of the deceased, namely, Sher Singh and Manjit Kaur. The incident was reported to SI Bahadur Singh by PW2 Sher Singh at bus stand Datal at 11:00 A.M. i.e. within half an hour of the occurrence on the basis of which FIR Ex. PD/2 was recorded at Police Station, Patran. The detailed ocular version as narrated by PW2 Sher Singh and PW3 Manjit Kaur is duly corroborated by the medical evidence as well as by the Ballistics Expert.

In view of the above, the conviction of the appellant under Section 302 IPC along with fine and the default clause as awarded by the Sessions Judge, Patiala, vide his judgment dated March 19,1998 is upheld and the appeal filed by the appellant Pipal Singh is dismissed. In case the appellant is on bail then his bail bonds stand cancelled and the appellant be sent to jail to serve out the remaining portion of his sentence.

(ASHUTOSH MOHUNTA)
JUDGE

23.11.2007
Rupi

(MOHINDER PAL)
JUDGE